

Brian J. Hilverda [ISB No. 7952]
Steven R. McRae [ISB No. 7984]
Adam J. Ondo [ISB No. 10389]
HILVERDA MCRAE, PLLC
812 Shoshone Street East
P.O. Box 1233
Twin Falls, ID 83303-1233
Telephone No. (208) 944-0755
Facsimile No. (208) 736-0041
smcrae@magicvalleylegal.com

Attorneys for Respondent

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF: Burley Demolition Asbestos Site, Burley, Cassia County, Idaho Brian Tibbets, Representative of Diconia LLC, Respondent.	WRITTEN COMMENTS IN RESPONSE TO ADMINISTRATIVE ORDER DIRECTING COMPLIANCE WITH REQUEST FOR ACCESS U.S. EPA Region 10 CERCLA Docket No. 10-2018-0361 Proceeding Under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9604(e).
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COMES NOW, respondent Brian Tibbets, Representative of Diconia LLC, by and through its attorneys Hilverda McRae, PLLC, and submits written comments intended to clarify findings of fact made in the Administrative Order Directing Compliance with Request for Access (“Order”).

I. INTRODUCTION

As indicated on August 15, 2018 via email from Respondent's counsel to Richard Mednick, Respondent has agreed to comply with the Order. By this writing, Respondent intends to address, paragraph by paragraph, the contents of the Order as permitted by Paragraph 30 of the Order in order to clarify certain factual statements as set forth in the Order.

II. COMMENTS CLARIFYING AND PROVIDING CONTEXT TO FINDINGS OF FACT

The following are comments, organized paragraph by paragraph on the Order and are intended to offer clarification of certain factual assertions set forth in the Order:

1. No comment on jurisdiction.
2. No comment on statement of purpose.
3. No comment.
4. No comment.
5. To provide context for why the demolition occurred, following the fire at the premises in question, Respondent spoke with Mark Mitton of the City of Burley, who informed Respondent that the building needed to be demolished on account of it being a hazard (the premises is located on a main highway in city limits with foot traffic nearby). The City of Burley does not require a demolition permit. To the best knowledge of Respondent, Respondent acted in compliance with all local and state laws and regulations in demolishing the building. Furthermore, as to not notifying the EPA or retaining an asbestos contractor, Respondent had no knowledge of the presence of asbestos located on the premises. No person at the City of Burley nor any other person or governmental agent ever mentioned asbestos being located at the premises. The presence of asbestos was not revealed during the purchase of the properties, either. Accordingly, there was no reason for Respondent, based on the knowledge at hand, to

notify the EPA. Importantly, Respondent was cooperating with administrators from the City of Burley who were instructing Respondent to demolish the structures.

6. On March 21, 2018, Stephen Ball, EPA Site Coordinator, instructed Respondent to place a fence around the site, to place warning signs on the fence, and to apply water to the debris. After contacting multiple fence companies, Respondent chose 3H Fence because 3H's representative stated that 3H could construct the fence sooner than the other contractor companies who Respondent had communicated with. A fence stretching along the Overland Ave boundary and three quarters of the northern boundary of the property was constructed by March 29, 2018. Signs were erected the following day. Continued return of 3H was necessary, as on two (2) occasions, 3H ran out of fencing material and had to return to the site at a later time to finalize the fence. On each occasion, Respondent communicated with site coordinator, Stephen Ball, to inform of the situation. Furthermore, on each occasion, Respondent instructed 3H to finalize the fence as soon as possible. Any issues raised on the fence were immediately turned over to 3H for remedial actions as soon as Respondent learned of the same. Turning to the issue of wetting down the debris, that was not possible at first due to the debris blocking access to the water connection. Respondent worked with Mr. Ball to access the connection in a timely and safe manner.

a. To specifically address the issue of the gap in the fence, Respondent would note that after 3H informed Respondent that they did not have enough fence on March 29, 2018, Respondent contacted Mr. Ball. After 3H brought more fence, only a four-foot gap remained, which Respondent covered with "Do not enter" police tape. Again, Respondent explained the issue to Mr. Ball, who stated that tape was insufficient. Accordingly, Respondent made the final piece of fence was installed by 3H within a week. Again, Respondent notified the EPA and

explained that the situation was not within Respondent's control but that Respondent was continually working to remedy the action through its contractor, 3H. Respondent acted with due diligence and provided all reasonable cooperation in this matter.

b. To specifically address the issue of Respondent's alleged failure to periodically apply water to the site, Respondent communicated to Mr. Ball that a Respondent had installed a sprinkler system that was set on a timer to automatically run from 2 p.m. to 5 p.m. every day. Mr. Ball informed Respondent that such a plan was sufficient for the site. This sprinkler system has been maintained at a cost to Respondent. Respondent knows of no malfunctions with the sprinkler system. On two (2) occasions during the summer months, Respondent has been informed that there was no water being applied on the property and, upon inspection on those two (2) incidents, Respondent found that the water valve to the property had been turned off by an unknown individual. On both of these occasions, Respondent immediately turned the water back on to continue the scheduled wetting of the site. Outside of these two (2) incidents, Respondent had no notice of reports of inadequate wetting down of the debris until August 13, 2018, when his attorney informed him of the complaints made on August 10, 2018 (during weekend hours). Respondent was travelling to China on August 13, 2018, but immediately contacted an associate in Burley, Idaho to inspect the sprinkler system (with an anticipation that the water may have been shut off again). Respondent learned from his associate that the water was still on and that the sprinkler system was in working order as it had been historically. It was only after discussion with Mr. Ball on August 13, 2018 that Respondent learned that the historical watering of the site was no longer considered adequate.

7. It is understood to Respondent that Mr. Ball visited the site on August 10, 2018 after 5 PM, which is why he did not see any water being applied to the debris.

8. No comment.

9. No comment.

10. No comment.

11. No comment.

12. Respondent has continually indicated his willingness to provide access to the site and comply with EPA requests. However, the access has been somewhat curtailed by a Preservation Request Letter dated March 8, 2018 submitted by Jeanne Proctor of the EPA. Brad Roberts of the EPA Office of Criminal Enforcement, Forensics, & Training, Criminal Investigation Division, Seattle Area Office, has been in communication with Respondent's counsel and has generally informed Respondent that failure to preserve the site could lead to criminal penalties pursuant to 18 U.S.C. § 2232. Upon further inquiry, it was relayed to Counsel for Respondent that this order applied to granting access for removal purposes to the civil arm of the EPA, e.g. Richard Mednick. Respondent, through counsel, has communicated with Mr. Roberts and Mr. Mednick in regard to the issues in providing access. Counsel would further note that August 11, 2018, and August 12, 2018, were a Saturday and Sunday, respectively, which is why Kris Leefers requests were not immediately responded to. Respondent immediately addressed the issues raised on August 10, 2018 when his counsel learned of the same and communicated the same to Respondent on the morning of August 13, 2018.

13. No comment

14. No comment

15. No comment

16. No comment

17. No comment

18. No comment

19. See written comments in response to Paragraph 12.

No further comments are made on the remaining paragraphs of the Order.

DATED August 16, 2018.



Steven R. McRae
Attorney for Respondent